

B227414

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION 4

ELFEGO RODRIGUEZ ET AL.  
*Plaintiffs and Appellants,*

v.

BURBANK POLICE DEPARTMENT ET AL.,  
*Defendants and Respondents.*

COURT OF APPEAL - SECOND DIST.  
**FILED**

SEP 2 2011

JOSEPH A. LANE

Clerk

Deputy Clerk

Appeal from Superior Court of Los Angeles County, Department 37  
The Honorable Joanne O'Donnell, Telephone: (213) 974-5649  
LASC Case No. BC 414602

**MOTION TO TAKE JUDICIAL NOTICE OF (1) PLAINTIFF AND  
APPELLANT ELFEGO RODRIGUEZ'S COMPLAINT FILED IN  
UNITED STATES DISTRICT COURT, CENTRAL DISTRICT,  
CASE NO. CV11-04858-ODW-PJWx ; (2) DECLARATION OF  
SERGIO BENT FILED IN THAT SAME LAWSUIT; (3) MAY 18,  
2011 MINUTE ORDER GRANTING SUMMARY JUDGMENT  
AGAINST PLAINTIFF OMAR RODRIGUEZ**

MITCHELL SILBERBERG & KNUPP LLP  
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Attorneys for Defendant and Respondent  
CITY OF BURBANK, including the POLICE DEPARTMENT OF THE  
CITY OF BURBANK (erroneously sued as an independent entity named  
“BURBANK POLICE DEPARTMENT”)

Pursuant to Evidence Code Sections 452(d) and 459 and Rule 8.252 of the California Rules of Court, Defendant and Respondent City of Burbank, including the Police Department of the City of Burbank (erroneously sued as an independent entity named “Burbank Police Department”) (“Burbank” or “Respondent”) hereby respectfully moves the Court to take judicial notice of:

(1) Plaintiff and Appellant Elfego Rodriguez’s (“Rodriguez”) “Complaint For Discriminatory And Retaliatory Discharge From Employment” filed on June 8, 2011 in *Elfego Rodriguez v. City of Burbank, Tim Stehr, Juli Scott, et al.*, United States District Court, Central District of California Case No. CV11-04858-ODW (the “Federal Complaint”);

(2) a July 20, 2011 declaration of Sergio Bent filed in the same matter (“Bent Declaration”); and

(3) a May 18, 2011 minute order granting summary judgment against Plaintiff Omar Rodriguez in Los Angeles Superior Court Case No. BC414602 (“Omar Rodriguez Order”).

A true and correct copy of the Federal Complaint is attached as Exhibit 1 to the to the Declaration of Veronica von Grabow attached hereto (“von Grabow Declaration”). A true and correct copy of the Bent Declaration is attached as Exhibit 2 to the von Grabow Declaration. A true and correct copy of the Omar Rodriguez Order is attached as Exhibit 3 to the von Grabow Declaration. *See* von Grabow Declaration, ¶¶ 2, 3, and 4.


The Federal Complaint is relevant to Rodriguez’s appeal because it establishes that he has challenged his termination in court, despite the alleged failure by the trial court to allow Rodriguez to amend his complaint to include his termination that Rodriguez complains of in his appeal. The Bent Declaration is relevant to Rodriguez’s appeal because it describes facts forming the basis of an argument Burbank would have presented in opposition to any motion Rodriguez made to amend his state court complaint, if Rodriguez had ever actually made such a motion. The Omar

Rodriguez Order is relevant to Elfego Rodriguez's appeal because it establishes that more than a year after he and his co-Plaintiff Omar Rodriguez stated their intention to amend their complaints to include their terminations, Omar Rodriguez did not do so, because summary judgment was granted against Omar Rodriguez based on the First Amended Complaint. *See* California Rule of Court 8.252(a)(2)(A).

Neither the Federal Complaint, the Bent Declaration, nor the Omar Rodriguez Order was presented to the trial court; they were both filed after the date of the order that is the subject of this appeal. *See* California Rule of Court 8.252(a)(2)(B) and (C), Exhibits 1, 2 and 3 to the von Grabow Declaration.

This Motion is based on the supporting Memorandum of Points and Authorities attached hereto, the declaration of Veronica von Grabow attached hereto, and upon all other oral and documentary evidence as may be presented at the hearing of this Motion.

DATED: September 2, 2011 MITCHELL SILBERBERG & KNUPP LLP  
Lawrence A. Michaels  
Veronica T. von Grabow

By:   
Veronica T. von Grabow  
Attorneys for Defendant and  
Respondent CITY OF BURBANK,  
including the POLICE DEPARTMENT  
OF THE CITY OF BURBANK  
(erroneously sued as an independent  
entity named "BURBANK POLICE  
DEPARTMENT")

## **MEMORANDUM OF POINTS AND AUTHORITIES**

Plaintiff and Appellant Rodriguez has appealed from a July 12, 2010 order granting summary judgment in favor of Defendant and Respondent Burbank on claims relating to Rodriguez's employment.

In support of its Respondent's Brief, Burbank respectfully moves this Court to take judicial notice of:

(1) *The complaint filed in Elfego Rodriguez v. City of Burbank, Tim Stehr, Juli Scott, et al., United States District Court, Central District of California Case No. CV11-04858-ODW (the "Federal Complaint")*. A copy of the Federal Complaint is attached as Exhibit 1 to the von Grabow Declaration.

(2) *The July 20, 2011 declaration of Sergio Bent filed in the same matter ("Bent Declaration")*. A copy of the Bent Declaration, together with its exhibits, is attached as Exhibit 2 to the von Grabow Declaration.

(3) *The May 18, 2011 minute order granting summary judgment against Plaintiff Omar Rodriguez ("Omar Rodriguez Order")*. A copy of the Omar Rodriguez Order is attached as Exhibit 3 to the von Grabow Declaration.

This Court may take judicial notice of the Federal Complaint, Bent Declaration, and Omar Rodriguez Order. Under Evidence Code Section 459, appellate courts enjoy the same right and power to take judicial notice as the trial court. Section 459 provides that "[t]he reviewing Court may take judicial notice of any matter specified in Section 452." Evidence Code Section 452 states that judicial notice may be taken of "[r]ecords of (1) any court of this state or (2) any court of record of the United States...." *See also, e.g., Eddins v. Redstone*, 134 Cal. App. 4th 290, 301 n.5 (2005) (court granted requests to take judicial notice of unpublished federal opinion and documents filed in federal case); *People v. Johnson*, 38 Cal. 4th 1096, 1103

(2006) (court granted request to take judicial notice of court documents in federal case); *Gerawan Farming, Inc. v. Lyons*, 24 Cal.4th 468, 483 (2000) (granted judicial notice of state superior court decision).

The Federal Complaint is directly relevant to Rodriguez's appeal. In his appeal, Rodriguez argues that he was prejudiced when the trial court "refus[ed] to allow an amendment" to his complaint in the state court case that would have included his termination in the case. *See Appellant's Brief*, page 13. Rodriguez's June 8, 2011 Federal Complaint—which is titled "Complaint for Discriminatory and Retaliatory Discharge From Employment"—establishes that Rodriguez was able to challenge (and has in fact challenged) his termination in court, despite any actions he alleges were taken by the state court. *See California Rule of Court 8.252(a)(2)(A)*.

The Bent Declaration is directly relevant to Rodriguez's appeal. It describes facts relating to an internal administrative appeal of Rodriguez's termination. These facts form the basis of an argument Burbank would have presented in opposition to any motion Rodriguez had made to amend his state court complaint to include his termination, if Rodriguez had ever made such a motion (he did not). *See California Rule of Court 8.252(a)(2)(A)*.

The Omar Rodriguez Order is directly relevant to Elfego Rodriguez's appeal because it establishes that more than a year after he and his co-Plaintiff Omar Rodriguez stated their intention to amend their complaints to include their terminations, Omar Rodriguez did not do so, because summary judgment was granted against Omar Rodriguez based on the First Amended Complaint. *See California Rule of Court 8.252(a)(2)(A)*.

Neither the Federal Complaint, the Bent Declaration, nor the Omar Rodriguez Order was presented to the trial court. None of these documents had been filed when the trial court entered summary judgment in favor of Burbank on Elfego Rodriguez's claims. The Federal Complaint was filed

on June 8, 2011, about a year after the order giving rise to this appeal was entered. The Bent Declaration was filed on July 20, 2011. The Omar Rodriguez order is dated May 18, 2011. *See* Exhibits 1, 2 and 3 to the von Grabow Declaration; *see also* California Rule of Court 8.252(a)(2)(B) and (C).

For all the foregoing reasons, Defendant and Respondent Burbank respectfully move this Court to take judicial notice of the Federal Complaint attached as Exhibit 1 to the von Grabow Declaration, the Bent Declaration (and its exhibits) attached as Exhibit 2 to the von Grabow Declaration, and the Omar Rodriguez Order attached as Exhibit 3 to the von Grabow Declaration.

DATED: September 2, 2011    MITCHELL SILBERBERG & KNUPP LLP  
Lawrence A. Michaels  
Veronica T. von Grabow

By: 

Veronica T. von Grabow  
Attorneys for Defendant and  
Respondent CITY OF BURBANK,  
including the POLICE DEPARTMENT  
OF THE CITY OF BURBANK  
(erroneously sued as an independent  
entity named "BURBANK POLICE  
DEPARTMENT")



## DECLARATION OF VERONICA VON GRABOW

I, VERONICA VON GRABOW, declare:

1. I am an attorney at law duly licensed to practice law in the State of California and before this Court. I am an associate attorney with the law firm of Mitchell Silberberg & Knupp LLP, attorneys of record for Respondent and Defendant Burbank. Unless otherwise stated, I have personal knowledge of the following facts and, if called and sworn as a witness, could and would competently testify thereto.

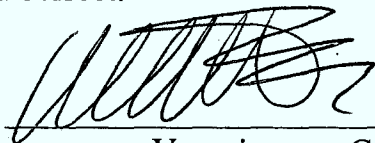
2. A true and correct copy of the complaint filed in *Elfego Rodriguez v. City of Burbank, Tim Stehr, Juli Scott, et al., United States District Court*, Central District of California Case No. CV11-04858-ODW is attached hereto as Exhibit 1.

3. A true and correct copy of a July 20, 2011 declaration by Sergio Bent that my offices filed in *Elfego Rodriguez v. City of Burbank, Tim Stehr, Juli Scott, et al., United States District Court*, Central District of California Case No. CV11-04858-ODW on July 20, 2011 is attached hereto as Exhibit 2, together with its exhibits.

4. A true and correct copy of a May 18, 2011 minute order granting summary judgment against Plaintiff Omar Rodriguez is attached hereto as Exhibit 3.

Executed this 2nd of September, 2011, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Veronica von Grabow

# **EXHIBIT 1**

(SPACE BELOW FOR FILING STAMP ONLY)

Solomon E. Gresen [SBN: 164783]  
**LAW OFFICES OF RHEUBAN & GRESEN**  
15910 Ventura Boulevard, Suite 1610  
Encino, California 91436  
Telephone: (818) 815-2727  
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Attorneys for Plaintiff Elfego Rodriguez

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ELFEGO RODRIGUEZ,

Plaintiff,

vs.

CITY OF BURBANK, TIM STEHR,  
JULI SCOTT, and DOES 1 through 10,  
inclusive,

Defendants.

**CV11 04858 ODW**

COMPLAINT FOR  
DISCRIMINATORY AND  
RETALIATORY DISCHARGE FROM  
EMPLOYMENT

**[DEMAND FOR JURY TRIAL]**

COMES NOW Plaintiff, ELFEGO RODRIGUEZ, and alleges as follows:

**JURISDICTION AND VENUE**

1. The claims made herein are asserted pursuant to the United States Constitution, and 42 U.S.C. §§ 1981, 1983, and 1985, et seq., and the jurisdiction of this court is invoked pursuant to 28 U.S.C. 1331 and 1343.

2. The acts complained of occurred in this district and, therefore, venue lies in this District pursuant to 28 U.S.C. 1391.

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CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

**PARTIES**

3. Plaintiff at all times herein mentioned was employed with Defendant City of Burbank as a peace officer with the Burbank Police Department, ("BPD"). Plaintiff is an Hispanic male.

4. Defendant City of Burbank (hereinafter, "COB") is a municipal agency, organized and operating as a general law city, and organized under the Constitution and laws of the State of California. The Burbank Police Department (hereinafter, "BPD") is a municipal law enforcement agency operated by the City of Burbank. The BPD is an employing public safety department as that term is used in Government Code section 3300, et.seq.

5. Defendant Tim Stehr was at all times herein mentioned a resident of the County of Los Angeles and was employed with Defendant City of Burbank as its Chief of Police; that as the Chief of Police, Defendant Stehr was vested with the power and authority to make and approve policies relating to the BPD and its operations, as well as decisions relating to personnel, including but not limited to, initiation of internal investigations and imposition of disciplinary actions. Defendant Stehr is sued in his personal and official capacities.

6. Defendant Juli Scott is and was at all times herein mentioned a resident of the County of Los Angeles and employed with Defendant City of Burbank as the Chief Assistant City Attorney; that as the Chief Assistant City Attorney, Defendant Scott was vested with the power and authority to make, recommend and/or approve policies relating to the BPD and its operations, as well as decisions relating to personnel, including but not limited to, initiation of internal investigations and imposition of disciplinary actions. Defendant Scott is sued in her personal and official capacities.

7. Plaintiff is informed and believes and thereon alleges that the actions of the BPD, taken by and through its designated employees and agents, were committed within the purpose and scope of their employment or relationship with

1 Defendant City and that Defendant City is legally responsible for all such acts or  
2 omissions.

3 8. Defendant City employs in excess of five persons and is thereby  
4 subject to the provisions of Government Code section 12900 et seq prohibiting  
5 employers or their agents from discriminating against employees on the basis of  
6 race, color, gender, marital status and other bases.

7 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

8 9. Plaintiff was hired by Defendant COB as a BPD police officer in or  
9 about June, 2004. Plaintiff always performed his duties as a police officer in a  
10 professional and competent manner. In or about January, 2007, as a result of his  
11 hard work and accomplishments at the department, Plaintiff was promoted to the  
12 position of FTO. Plaintiff always performed his duties as an FTO in a professional  
13 and competent manner. In fact, during his tenure at the Burbank PD, Plaintiff has  
14 received numerous commendations and awards for his good performance, and has  
15 received the highest ranking possible ranking ("O" for "Outstanding") on many of  
16 the performance evaluations he received at the BPD.

17 10. On May 28, 2009, Plaintiff filed a lawsuit in the Superior Court of the  
18 State of California, County of Los Angeles, Case No. BC414602, for causes  
19 including, without limitation, race based harassment and retaliation (hereinafter,  
20 the "State Lawsuit".)

21 11. As a result of Plaintiff's filing of the State Lawsuit, Plaintiff was  
22 advised by employees of the BPD and COB that Defendants Stehr and other sworn  
23 and non-sworn COB personnel were planning and conspiring to retaliate against  
24 Plaintiff in ways including, without limitation, by making false accusations of  
25 unlawful conduct against him.

26 12. In furtherance of the above-described plan or conspiracy to retaliate  
27 against Plaintiff, in or about June, 2009, Plaintiff is informed that a formal  
28 complaint was filed against him for purportedly using unreasonable force during

1 the arrest of a robbery suspect in the Porto's Bakery investigation ("Portos") in or  
2 about January, 2008.

3 13. The true facts of Plaintiff's involvement, however, were as follows:  
4 Plaintiff was ordered to participate in the service of a search warrant with the  
5 Special Enforcement Detail, to which Plaintiff was soon to be assigned. During  
6 the service of the search warrant, it was alleged by the COB that the suspect  
7 alleged that a tall, bald, Caucasian officer struck him without cause. Though  
8 Plaintiff's head is shaven, Plaintiff is fairly short and compact, and could never be  
9 mistaken for Caucasian. Not one single police officer at the scene corroborated  
10 the suspect's allegations, and the suspect was not treated for his alleged injuries.

11 14. At the time, however, Defendant Scott and Does 1-10, and each of  
12 them, kept secret files on each "use of force" at the BPD. These reports were and  
13 are called TATAS, the acronym for "Tactical and Training Analysis" Reports.  
14 Defendant Scott and Does 1-10, and each of them, investigated each use of force  
15 which occurred at the BPD, and prepared a detailed analysis for future use in  
16 training for the specific officer or other members of the BPD. Plaintiff is informed  
17 and believes that the TATAS for the Portos investigation establish that Plaintiff  
18 had no part in any alleged "use of force." The TATAS, however, officially do not  
19 exist. Defendants Scott, Stehr and Does 1-10, and each of them, have steadfastly  
20 refused to provide the TATAS to the Plaintiff, investigators, the COB City  
21 Council, or even to state and federal investigators.

22 15. Further, during the BPD "investigation," Defendants Stehr, Scott and  
23 Does 1-10, and each of them, showed photographs to the investigators and others  
24 of severely beaten suspects, claiming that Plaintiff was the cause of the damages  
25 depicted in the photographs. Plaintiff was even asked questions about these  
26 photographs in the State Court Action, though the true facts are that many of the  
27 individuals in the photographs were not involved in the Portos case.

28 //

1           16. Nevertheless, Plaintiff was terminated in or about June, 2010,  
2 purportedly for his "use of force" in the Portos case and for his general failure to  
3 be "honest" about it thereafter.

4                   **DFEH AND GOVERNMENT CLAIM ALLEGATIONS**

5           17. Plaintiff exhausted his administrative remedies prior to the filing of  
6 the instant Complaint pursuant to California Government Code section 12965.

7               a. On or about November 18, 2010, Plaintiff filed a Governmental  
8 Claim Form with the COB, which the COB rejected on December 8, 2010, true  
9 and correct copies of which are attached, collectively marked as **EXHIBIT A** and  
10 are incorporated herein by this reference as though fully set forth at length.

11              b. On or about June 6, 2011, Plaintiff filed his complaint  
12 (E201011R8041-00) with the Department of Fair Employment and Housing  
13 ("DFEH"), alleging that he experienced "discrimination," based on "race," and  
14 that he was "retaliated against," and that he was "terminated," On or about June 6,  
15 2011, Plaintiff received his Notice of Case Closure/Right To Sue letter from the  
16 DFEH. (True and correct copies of Plaintiff's DFEH Complaint and Right To Sue  
17 letter are attached hereto collectively, marked as **EXHIBIT B**, and incorporated  
18 herein by this reference as though fully set forth at length.)

19                   **FIRST CLAIM**

20                   **Discrimination and Retaliatory Termination - 42 USC §1981**

21                   **vs. City of Burbank and Does 1-10, inclusive**

22           18. Plaintiff realleges and incorporates by reference as if fully set forth  
23 herein Paragraphs 1 through 17.

24           19. On May 28, 2009, Plaintiff filed the State Lawsuit.

25           20. As a result of Plaintiff's filing of the State Lawsuit, Defendants Stehr,  
26 Scott and Does 1-10, and each of them, conspired to retaliate against Plaintiff in  
27 ways including, without limitation, by making false accusations of unlawful  
28 conduct against him, intimidating witnesses, and hiding exculpatory evidence -



1 ultimately resulting in his termination. Plaintiff's termination was also racially  
2 motivated and adverse to Plaintiff.

3 21. The initiation and prosecution of disciplinary action culminating in  
4 Plaintiff's June 2010, termination was retaliatory and racially motivated.

5 22. The aforesaid acts of Defendants Stehr, Scott and Does 1-10, and  
6 each of them, were within the scope of their employment with the Defendant COB.

7 23. Defendant COB did not exercise reasonable care to prevent and  
8 promptly correct any harassing or discriminatory behavior involving the BPD and  
9 specifically with regard to the above incidents and, in fact, have taken no  
10 appropriate action in regard to said events.

11 24. As hereinbefore alleged, Defendant COB had a written policy  
12 espousing that discrimination would not be tolerated; however, in practice  
13 discrimination occurred and was allowed to occur and the Defendant COB did not  
14 require compliance with its own policies and procedures with respect to  
15 discrimination. Instead, Defendant COB used its internal affairs investigation  
16 policies and procedures to discriminate and retaliate against Plaintiff as  
17 hereinabove alleged.

18 25. The aforesaid acts and omissions of Defendants COB, Stehr, Scott,  
19 Does 1-10, and their employees, agents and representatives, and each of them,  
20 constitute unlawful employment practices in violation of the section 1981 Civil  
21 Rights Act of 1886 (42 USC § 1981).

22 26. As a direct result of the aforesaid acts and omissions of the  
23 Defendants COB, Stehr, Scott, Does 1-10, and each of them, by and through their  
24 employees, agents, and representatives, Plaintiff has suffered economic injury as a  
25 result of his discriminatory and retaliatory discharge.

26 27. As a direct, foreseeable and proximate result of the aforesaid  
27 discriminatory acts and omissions, Plaintiff suffered and continues to suffer

28 //



1 humiliation, embarrassment, mental and emotional distress and discomfort, all to  
2 his damage in an amount according to proof.

3 **SECOND CLAIM**

4 **Discrimination and Retaliatory Termination - 42 USC §1983**

5 **vs. All Defendants**

6 28. Plaintiff realleges and incorporates by reference as if fully set forth  
7 herein Paragraphs 1 through 17 and 19 through 27.

8 29. Defendants COB, Stehr, Scott, Does 1-10, and each of them, used  
9 and/or allowed official policies, procedures and/or practices to discriminate  
10 against Plaintiff on the basis of his race, including but not limited to the BPD  
11 policies and procedures, in violation of the Fourteenth Amendment to the United  
12 States Constitution as made actionable pursuant to 42 USC § 1983.

13 30. There existed a pattern and practice within the Department to  
14 discourage minority officers from complaining or reporting misconduct; further  
15 that the BPD policies were improperly used to retaliate against minority officers  
16 who complained of discrimination or other unlawful conduct within the  
17 Department. This manner of selective enforcement had a chilling effect upon  
18 other officers in terms of their willingness to report misconduct or to act as a  
19 witness, in that being subjected to a "selective" investigation presented the  
20 potential for adverse employment action and a consequent affect on career  
21 promotional opportunities in the future.

22 31. By subjecting Plaintiff to the aforesaid racially hostile work  
23 environment and by discharging Plaintiff for filing the State Lawsuit for race  
24 based discrimination and harassment, as previously alleged herein, Defendant  
25 violated the Fourteenth Amendment to the United States Constitution as made  
26 actionable pursuant to 42 USC § 1983.

27 32. By discriminating against Plaintiff in the terms and conditions of his  
28 employment, by virtue of Plaintiff's discrimination and retaliatory discharge,

1 Defendants violated the Fourteenth Amendment to the United States Constitution  
2 as made actionable pursuant to 42 USC § 1983.

3 33. As a direct result of the aforesaid acts and omissions of the  
4 Defendants COB, Stehr, Scott, Does 1-10, and each of them, by and through its  
5 employees, agents, and representatives, Plaintiff has suffered economic injury in  
6 connection with receipt of regular pay, overtime pay, holiday pay, and all other  
7 pay and benefits.

8 34. As a direct, foreseeable and proximate result of the aforesaid  
9 discriminatory acts and omissions, Plaintiff suffered and continues to suffer  
10 humiliation, embarrassment, mental and emotional distress and discomfort, all to  
11 his damage in an amount according to proof.

12 35. In performing the acts hereinbefore alleged, Defendants Stehr, Scott,  
13 Does 1-10, and each of them, acted intentionally to injury Plaintiff and further  
14 their conduct was despicable and performed with a willful and conscious disregard  
15 of Plaintiff's civil rights such that punitive or exemplary damages are sought.

16 **THIRD CLAIM**

17 **Conspiracy - 42 USC § 1985**

18 **vs. Stehr, Scott and Does 1-10, Inclusive**

19 36. Plaintiff realleges and incorporates by reference as if fully set forth  
20 herein Paragraphs 1 through 17, 19 through 27 and 29 through 35.

21 37. In perpetrating, allowing, and ratifying the aforesaid acts and  
22 omissions, Defendants Stehr, Scott and Does 1-10, and each of them, conspired to  
23 and did interfere with and deny Plaintiff the exercise of his civil rights to be free  
24 from discrimination.

25 38. The Department's initiation and prosecution of disciplinary action  
26 resulting in Plaintiff's termination was retaliatory and racially motivated and was  
27 done in furtherance of the conspiracy of and by Defendants, and each them, to

28 //

1 interfere with and deny Plaintiff the exercise of his civil rights to be free from  
2 discrimination.

3 39. The aforesaid acts of Defendants Stehr, Scott and Does 1-10, and  
4 each of them, were perpetrated and made possible by the scope of their  
5 employment or relationship with the Defendant COB.

6 40. As a direct result of the aforesaid conspiracy, Plaintiff has suffered  
7 economic injury in connection with receipt of regular pay, overtime pay, holiday  
8 pay, and all other pay and benefits.

9 41. As a direct, foreseeable and proximate result of the aforesaid  
10 conspiracy, Plaintiff suffered and continues to suffer humiliation, embarrassment,  
11 mental and emotional distress and discomfort, all to his damage in an amount  
12 according to proof.

13 42. In performing the acts hereinbefore alleged, Defendants Stehr, Scott  
14 and Does 1-10, and each of them, acted intentionally to injure Plaintiff and further  
15 their conduct was despicable and performed with a willful and conscious disregard  
16 of Plaintiff's civil rights such that punitive or exemplary damages are sought.

17 **FOURTH CLAIM**

18 **Wrongful Termination - Government Code §12900 et seq.**

19 **vs. City of Burbank and Does 1-10**

20 43. Plaintiff realleges and incorporates by reference as if fully set forth  
21 herein Paragraphs 1 through 17, 19 through 27, 29 through 35 and 37 through 42.

22 44. Government Code section 12940(a) embodies fundamental,  
23 substantial, and well-established public policies of the State of California.  
24 Defendant COB and Does 1-10, and each of them violated the fundamental,  
25 substantial, and well-established public policies embodied in Government Code  
26 section 12940(a), by discharging Plaintiff for reasons set forth above.

27 45. Government Code section 12940(h) embodies fundamental,  
28 substantial, and well-established public policies of the State of California.

1 Defendant COB and Does 1-10, and each of them, violated the fundamental,  
2 substantial, and well-established public policies embodied in Government Code  
3 section 12940(h), by retaliating against Plaintiff and terminating him because he  
4 opposed the afore-mentioned acts of discrimination forbidden under Government  
5 Code section 12940, subsections (a) and (h).

6 46. Government Code sections 12940 (j) and (k) also embody  
7 fundamental, substantial, and well-established public policies of the State of  
8 California. By failing to take all reasonable steps necessary to prevent harassment  
9 and discrimination from occurring, as hereinabove described, Defendant COB and  
10 Does 1-10, and each of them violated the fundamental, substantial, and well-  
11 established public policies embodied in Government Code section 12940(j) and  
12 (k).

13 47. The aforesaid acts and omissions of Defendant COB and Does 1-10,  
14 and each of them, and its employees, agents and representatives, and each of them,  
15 constitute unlawful employment practices in violation of California Government  
16 Code section 12940 et seq.

17 48. As a direct result of the aforesaid acts and omissions of the Defendant  
18 COB and Does 1-10, and each of them, by and through its employees, agents, and  
19 representatives, Plaintiff has suffered economic injury due to the loss of his  
20 employment.

21 49. As a direct, foreseeable and proximate result of the aforesaid  
22 discriminatory acts and omissions, Plaintiff suffered and continues to suffer  
23 humiliation, embarrassment, mental and emotional distress and discomfort, all to  
24 his damage in an amount according to proof.

25 //

26 //

27 //

28 //

**FIFTH CLAIM**

**Violation of Peace Officer Procedural Bill of Rights**

**Government Code §3300 et seq.**

**vs. City of Burbank and Does 1-10**

50. Plaintiff realleges and incorporates by reference as if fully set forth herein Paragraphs 1 through 17, 19 through 27, 29 through 35, 37 through 42 and 44 through 49.

51. Government Code section 3300 embodies fundamental, substantial, and well-established public policies of the State of California. "The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California." Id.

52. Government Code section 3304 also embodies fundamental, substantial, and well-established public policies of the State of California. By retaliating against police officers when they reported discrimination, harassment or other types of misconduct, as more fully described above, and by failing to conduct proper investigations, withholding exculpatory material, refusing to provide all statements concerning an investigation resulting in termination, by terminating Plaintiff more than 1 year from the date of the alleged conduct, among other things, Defendant COB and Does 1-10, and each of them, violated Government Code section 3304, and the fundamental, substantial, and well-established public policies embodied therein.

53. Government Code section 3309.5 also embodies fundamental, substantial, and well-established public policies of the State of California. "In any

1 case where the superior court finds that a public safety department has violated  
2 any of the provisions of this chapter, the court shall render appropriate injunctive  
3 or other extraordinary relief to remedy the violation and to prevent future  
4 violations of a like or similar nature, including, but not limited to, the granting of a  
5 temporary restraining order, preliminary injunction, or permanent injunction  
6 prohibiting the public safety department from taking any punitive action against  
7 the public safety officer." Id. Therefore, injunctive relief as requested in this  
8 Complaint is expressly permitted under the Public Safety Officer's Procedural Bill  
9 of Rights, such that an injunction should properly issue to enjoin further  
10 misconduct on the part of Defendant COB and Does 1-10, and each of them.

11 54. Plaintiff is informed and believes and based thereon alleges that in  
12 addition to the practices enumerated above, Defendants, and each of them, have  
13 engaged in other practices in violation of the Public Safety Officer's Procedural  
14 Bill of Rights, which are not yet fully known. At such time as said practices  
15 become known, Plaintiffs will seek leave of Court to amend this Complaint in that  
16 regard.

17 55. Government Code sections 3309.5(e) provides, in pertinent part, that  
18 "In addition to the extraordinary relief afforded by this chapter, upon a finding by  
19 a superior court that a public safety department, its employees, agents, or assigns,  
20 with respect to acts taken within the scope of employment, maliciously violated  
21 any provision of this chapter with the intent to injure the public safety officer, the  
22 public safety department shall, for each and every violation, be liable for a civil  
23 penalty not to exceed twenty-five thousand dollars (\$25,000) to be awarded to the  
24 public safety officer whose right or protection was denied and for reasonable  
25 attorney's fees as may be determined by the court."

26 56. Plaintiff is informed and believe and based thereon alleges that the  
27 outrageous conduct of the Defendants, and each of them, as more fully described  
28 above, was done with malice and with a conscious disregard for Plaintiffs' rights,



1 and with the intent, design and purpose of injuring the Plaintiff. Plaintiff is further  
2 informed and believes that Defendant COB and Does 1-10, and each of them,  
3 through their officers, managing agents and/or supervisors, authorized, condoned,  
4 ratified or otherwise adopted the unlawful malicious conduct of Defendants Stehr,  
5 Scott and Does 1-10, and each of them. By reason thereof, and as set forth in  
6 Government Code sections 3309.5(e), Plaintiff is each entitled to receive "a civil  
7 penalty" in the amount of \$25,000.00 for each malicious violation of the Public  
8 Safety Officer's Procedural Bill of Rights, as hereinabove described, in a total  
9 amount according to proof at trial.

10 57. As a direct and proximate result of Defendants, and each of their  
11 violations of the Public Safety Officer's Procedural Bill of Rights, as more fully  
12 described above, Plaintiff has been compelled to retain the services of counsel in  
13 an effort to enforce the terms and conditions of the employment relationship with  
14 Defendants, and has thereby incurred, and will continue to incur, legal fees and  
15 costs, the full nature and extent of which are presently unknown to Plaintiff, who  
16 therefore will seek leave of Court to amend this Complaint in that regard when the  
17 same shall be fully and finally ascertained. Plaintiff requests that attorneys' fees  
18 and expert witness fees be awarded pursuant to Government Code section  
19 3309.5(e).

20 WHEREFORE, Plaintiff prays Judgment against Defendants for  
21 damages, as follows:

- 22 1. Compensatory damages, economic and non-economic in excess of the  
23 minimal jurisdiction of this Court, in an amount according to proof;
- 24 2. Attorney's fees in an amount according to proof pursuant to California  
25 Government Code § 12965(b) and/or 42 USC § 1988;
- 26 3. Attorneys' fees and expert witness fees be awarded pursuant to Government  
27 Code section 3309.5(e).

28 //

4. A "civil penalty" in the amount of \$25,000.00 for each malicious violation of the Public Safety Officer's Procedural Bill of Rights pursuant to Government Code section 3309.5(e).
5. Exemplary or punitive damages as to Defendants Stehr and Scott individually, in amounts according to proof, pursuant to California Civil Code section 3294, subd. (c)(1) and (2);
6. For costs of suit herein incurred;
7. For prejudgment interest pursuant to Civil Code § 3287(a);
8. For injunctive relief; and,
9. For such other and further relief as the Court may deem proper.

DATE: June 6, 2011

**RHEUBAN & GRESEN**

SOLOMON E. GRESEN  
Attorneys for Plaintiff

**DEMAND FOR JURY TRIAL**

Plaintiff Elfego Rodriguez hereby demands a jury trial.

DATE: June 6, 2011

**RHEUBAN & GRESEN**

SOLOMON E. GRESEN  
Attorneys for Plaintiff



**EXHIBIT A**

**RHEUBAN & GRESSEN**  
15910 VENTURA BOULEVARD  
SUITE 1610  
ENCINO, CALIFORNIA 91436  
TELEPHONE: (818) 815-2727  
FACSIMILE: (818) 815-2737

STEVEN V. RHEUBAN  
SOLOMON E. GRESSEN

STEVEN M. CISCHE  
ROBERT C. HAYDEN  
JOSEPH M. LEVY  
INDIA S. THOMPSON

November 18, 2010

**VIA HAND DELIVERY**

Ms. Margarita Campos, City Clerk  
Office of the City Clerk  
City of Burbank  
275 East Olive Avenue  
Burbank, California 91510-6459

**CITY OF BURBANK / BURBANK POLICE DEPARTMENT CLAIM FOR DAMAGES**  
**California Government Code §§ 910 et Seq.**

1. **Claimants:** The name and post office address of the Claimant is as follows: *California Government Code § 910(a).*

Elfego Rodriguez  
c/o Law Offices of Rheuban & Gresen  
15910 Ventura Boulevard, Suite 1610  
Encino, California 91436  
Telephone: (818) 815-2727  
Facsimile: (818) 815-2737

2. **Notices:** The post office address to which the person presenting the Claim desires notices to be sent is as follows: *(California Government Code § 910(b).)*

c/o Solomon E. Gresen, Esq.  
Law Offices of Rheuban & Gresen  
15910 Ventura Boulevard, Suite 1610  
Encino, California 91436  
Telephone: (818) 815-2727  
Facsimile: (818) 815-2737

3. **Description:** The date, place and other circumstances of the occurrence or transaction which gave rise to the Claim asserted are as follows: *(California Government Code § 910(c).)*

Between May, 2009 through the present, and continuing, the City of Burbank and their officers, employees, servants, and agents, without limitation, engaged in illegal and otherwise wrongful conduct including, without limitation: (A) discrimination, retaliation and wrongful

**LAW OFFICES OF RHEUBAN & GRESEN**

Claim for Damages

November 18, 2010

Page: 2

termination in violation of Claimants civil rights under the Fair Employment and Housing Act (Government Code, section 12940 et seq.) and 42 U.S.C. 1980-1983; among others; (B) violation of the Police Officer's Procedural Bill of Rights (POBAR) by failing to provide documents upon which adverse employment actions were based and terminating Claimant more than one year after the initiation of an investigation, among other things; and (C) conspiring to intimidate witnesses and withhold relevant evidence pertaining to Claimant's termination as well as his ongoing lawsuit against the City of Burbank.

4. Damages: A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the Claim is as follows: (*California Government Code § 910(d).*)

Claimant has been damaged in his career, and health, mind and body, and has suffered a loss of earnings, future earnings and earning capacity.

5. Names: The name or names of the public employee or employees causing the injury, damage, or loss. (*California Government Code § 910(e).*)

Claimant is informed and believes that the public employee or employees causing his injury, damage, or loss include, without limitation, Tim Stehr, Dennis Barlow and others in the Burbank City Attorney's Office, James Gardiner, and others.

6. Amount: The amount claimed exceeds ten thousand dollars (\$10,000.00). Accordingly, no dollar amount shall be included in the Claim. However, it shall indicate whether the claim would be a limited civil case. (*California Government Code § 910(f).*)

The amount claimed exceeds \$10,000.00. The total amount due to Claimant is presently unknown, but believed to be in excess of the minimum jurisdictional limits of the Court of Unlimited Jurisdiction.

LAW OFFICES OF RHEUBAN & GRESEN

By: \_\_\_\_\_

SOLOMON E. GRESEN

Attorney for Claimant, Elfeego Rodriguez

SEG/dj



**CITY OF BURBANK**  
**OFFICE OF THE CITY ATTORNEY**

275 East Olive Avenue • P.O. Box 6459 • Burbank, California 91510-6459  
818.238.5700 • 818.238.5724 FAX

DENNIS A. BARLOW  
City Attorney

JULI CHRISTINE SCOTT  
Chief Assistant City Attorney

**VIA US CERTIFIED MAIL**

December 8, 2010

Writers Direct Dial  
(818)238-6707

Elfego Rodriguez  
c/o Solomon E. Gresen  
Steven V. Rheuban  
Law Offices of Rheuban & Gresen  
15910 Ventura Boulevard, Suite 1610  
Encino, California 91436

Re: Claim of Elfego Rodriguez

Dear Mr. Rodriguez, Mr. Gresen, and Mr. Rheuban:

Notice is hereby given that the claim which you presented to the City of Burbank on or about November 18, 2010, wherein it alleges events and/or occurrences that occurred within six months of the date of filing, is being denied. With respect to that portion of your claim that has been denied, the following Warning is given:

**WARNING**

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

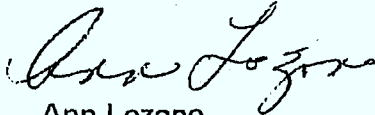
Notice is further given that the claim you presented to the City of Burbank on or about November 18, 2010, wherein it alleges events and/or occurrences that occurred more than six months before the date of filing, is being returned because it was not presented within six months after the event or occurrence as required by law. See Sections 901 and 911.2 of the Government Code. Because the claim was not presented within the time allowed by law, no action was taken on that portion of the claim.

Your only recourse at this time is to apply without delay to the City of Burbank for leave to present a late claim. See Sections 911.4 to 912.2, inclusive, and Section 946.6 of the Government Code. Under some circumstances, leave to present a late claim will be granted. See Section 911.6 of the Government Code.

December 8, 2010  
Page 2

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ann Lozano".

Ann Lozano  
Risk Management

**EXHIBIT B**

\*\*\* EMPLOYMENT \*\*\*

COMPLAINT OF DISCRIMINATION UNDER  
THE PROVISIONS OF THE CALIFORNIA  
FAIR EMPLOYMENT AND HOUSING ACTDFEH # E201011R8041-00

DFEH USE ONLY

## CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

YOUR NAME (Indicate Mr. or Ms.)

RODRIGUEZ, ELFEBO

TELEPHONE NUMBER (INCLUDE AREA CODE)

(818)815-2727

ADDRESS

C/O RHEUBAN & GRESEN 15910 VENTURA BL., STE. 1610

CITY/STATE/ZIP

ENCINO, CA 91436

COUNTY

LOS ANGELES

COUNTY CODE

037NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, OR STATE OR LOCAL GOVERNMENT AGENCY WHO  
DISCRIMINATED AGAINST ME:

NAME

CITY OF BURBANK / BURBANK PD

TELEPHONE NUMBER (Include Area Code)

(818)238-3000

ADDRESS

200 N. 3RD STREET

DFEH USE ONLY

CITY/STATE/ZIP

BURBANK, CA 91502

COUNTY

LOS ANGELES

COUNTY CODE

037

NO. OF EMPLOYEES/MEMBERS (If known)

150+DATE MOST RECENT OR CONTINUING DISCRIMINATION  
TOOK PLACE (month, day, and year)06/10/2010

RESPONDENT CODE

00

THE PARTICULARS ARE:

I allege that on about or before  
06/10/2010, the following  
conduct occurred:☒ termination☐ denial of employment☐ denial of family or medical leave☐ laid off☐ denial of promotion☐ denial of pregnancy leave☐ demotion☐ denial of transfer☐ denial of equal pay☒ harassment☐ denial of accommodation☐ denial of right to wear pants☐ genetic characteristics testing☒ failure to prevent discrimination or retaliation☐ denial of pregnancy accommodation☐ constructive discharge (forced to quit)☒ retaliation☐ impermissible non-job-related inquiry☒ other (specify) Discriminationby CITY OF BURBANK / BURBANK PD

Name of Person

Job Title (supervisor/manager/personnel director/etc.)

because of:

☐ sex☐ national origin/ancestry☐ disability (physical or mental)☒ retaliation for engaging in protected☐ age☐ marital status☐ medical condition (cancer or

activity or requesting a protected

☐ religion☐ sexual orientation

generic characteristic

leave or accommodation

☒ race/color☐ association☒ other (specify) Retaliation for filing DFEH claim and lawsuitState of what you  
believe to be the  
reason(s) for  
discriminationBECAUSE OF MY RACE AND BECAUSE I FILED A COMPLAINT WITH THE DFEH FOR HARASSMENT, DISCRIMINATION AND RETALIATION, AND ALSO  
BECAUSE I FILED A LAWSUIT IN THE CALIFORNIA SUPERIOR COURT FOR THE SAME.I wish to pursue this matter in court. I hereby request that the Department of Fair Employment and Housing provide a right-to-sue. I understand that if I want a federal notice of right-to-sue, I must visit  
the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of the DFEH "Notice of Case Closure," or within 300 days of the alleged discriminatory act,  
whichever is earlier.I have not been coerced into making this request, nor do I make it based on fear of retaliation if I do not do so. I understand it is the Department of Fair Employment and Housing's policy to not process  
or reopen a complaint once the complaint has been closed on the basis of "Complainant Elected Court Action."By submitting this complaint I am declaring under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge except as to  
matters stated on my information and belief, and as to those matters I believe it to be true.Dated 06/06/2011At 91436DATE FILED: 06/06/2011DFEH-300-030 (02/08)  
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

STATE OF CALIFORNIA



**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

1055 WEST 7TH STREET, SUITE 1400, LOS ANGELES, CA 90017  
(213) 439-6770  
www.dfeh.ca.gov

Phyllis W. Cheng, Director

June 06, 2011

RODRIGUEZ, ELFEGO  
C/O RHEUBAN & GRESSEN 15910 VENTURA BL., STE. 1610  
ENCINO, CA 91436

RE: E201011R8041-00  
RODRIGUEZ/CITY OF BURBANK / BURBANK PD

Dear RODRIGUEZ, ELFEGO:

**NOTICE OF CASE CLOSURE**

This letter informs that the above-referenced complaint that was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective June 06, 2011 because an immediate right-to-sue notice was requested. DFEH will take no further action on the complaint.

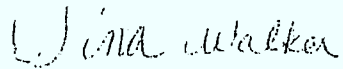
This letter is also the Right-To-Sue Notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

If a federal notice of Right-To-Sue is wanted, the U.S. Equal Employment Opportunity Commission (EEOC) must be visited to file a complaint within 30 days of receipt of this DFEH *Notice of Case Closure* or within 300 days of the alleged discriminatory act, whichever is earlier.



DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,



Tina Walker  
District Administrator

cc: Case File

CAMPOS MARGARITA  
CITY CLERK  
CITY OF BURBANK  
275 E. OLIVE AVENUE  
BURBANK, CA 91502

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge Otis D. Wright II and the assigned discovery Magistrate Judge is Patrick J. Walsh.

The case number on all documents filed with the Court should read as follows:

**CV11- 4858 ODW (PJWx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

☒ **Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

☐ **Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

☐ **Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Name & Address:

Solomon E. Gresen [SBN: 164783]  
Law Offices of Rheuban & Gresen  
15910 Ventura Boulevard, Suite 1610  
Encino, California 91436  
(818) 815-2727

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ELFEGO RODRIGUEZ

PLAINTIFF(S)

v.

CITY OF BURBANK, TIM STEHR, JULI SCOTT,  
and DOES 1 through 10, inclusive

DEFENDANT(S).

CASE NUMBER

**CV11 04858 ODW PJWx**

SUMMONS

TO: DEFENDANT(S): CITY OF BURBANK, TIM STEHR, JULI SCOTT, and DOES 1 through 10, inclusive

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Solomon E. Gresen, whose address is 15910 Ventura Boulevard, Suite 1610, Encino, California 91436. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

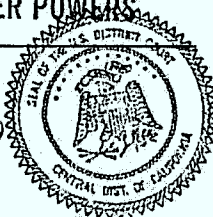
Dated: June 8, 2011

By: \_\_\_\_\_

**CHRISTOPHER POWERS**

Deputy Clerk

(Seal of the Court)



[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET

<b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> )  ELFEGO RODRIGUEZ	<b>DEFENDANTS</b>  CITY OF BURBANK, TIM STEHR, JULI SCOTT, and DOES 1 through 10, inclusive
<b>(b) Attorneys</b> (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)  Law Offices of Rheuban & Gresen (818) 815-2727 15910 Ventura Boulevard, Suite 1610 (818) 815-2737 FAX Encino, California 91436	<b>Attorneys</b> (If Known)

<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only</b> (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:35%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:35%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
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Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. ORIGIN** (Place an X in one box only.)

☒ 1 Original Proceeding   
 ☐ 2 Removed from State Court   
 ☐ 3 Remanded from Appellate Court   
 ☐ 4 Reinstated or Reopened   
 ☐ 5 Transferred from another district (specify):   
 ☐ 6 Multi-District Litigation   
 ☐ 7 Appeal to District Judge from Magistrate Judge

**V. REQUESTED IN COMPLAINT:** JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

**CLASS ACTION** under F.R.C.P. 23: ☐ Yes ☒ No

**MONEY DEMANDED IN COMPLAINT:** \$

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  
 COMPLAINT FOR DISCRIMINATORY AND RETALIATORY DISCHARGE FROM EMPLOYMENT

**VII. NATURE OF SUIT** (Place an X in one box only.)

<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act. <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane/Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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CV11 04858

FOR OFFICE USE ONLY: Case Number: \_\_\_\_\_

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEETVIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes  
If yes, list case number(s): \_\_\_\_\_VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☐ No ☒ Yes  
If yes, list case number(s): USDC Case No. CV11-03045 GW SSx (Related for Discovery Purposes)

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply)
- ☐
- A. Arise from the same or closely related transactions, happenings, or events; or
- 
- ☐
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- 
- ☐
- C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- 
- ☐
- D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
- 
- ☐
- Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
- 
- ☐
- Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
- 
- Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): \_\_\_\_\_ Date June 6, 2011

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

## **EXHIBIT 2**

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2 VERONICA T. VON GRABOW (SBN 259859)  
vty@msk.com  
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11377 West Olympic Boulevard  
4 Los Angeles, California 90064-1683  
Telephone: (310) 312-2000  
5 Facsimile: (310) 312-3100

6 Attorneys for Defendants  
CITY OF BURBANK and TIM STEHR  
7

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 ELFEGO RODRIGUEZ,

12 Plaintiff,

13 vs.

14 CITY OF BURBANK, TIM STEHR,  
15 JULI SCOTT, and DOES 1 through 10,  
inclusive,

16 Defendants.  
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CASE NO. CV 11-4858 -GW(SSx)

The Honorable George H. Wu

**DECLARATION OF SERGIO BENT  
IN SUPPORT OF DEFENDANTS'  
MOTION TO DISMISS, OR, IN THE  
ALTERNATIVE, STAY CASE  
PENDING OUTCOME OF  
PENDING PROCEEDINGS**

Time: 8:30 a.m.

Date: August 25, 2011

Courtroom: 10

**DECLARATION OF SERGIO BENT**

I, Sergio Bent, hereby declare as follows:

1. I am an attorney licensed to appear before this Court and a partner in the law firm of Bent Caryl & Kroll, LLP, and counsel of record for the City of Burbank ("City") in an administrative appeal brought by Elfego Rodriguez challenging his termination from City employment, as described below. As such, unless otherwise stated, the following statements are of my own personal knowledge, and if called upon to testify, I could and would testify competently thereto.

2. Plaintiff Elfego Rodriguez ("Rodriguez") was terminated from his employment with the Burbank Police Department on or about June 11, 2010. On June 21, 2010, Rodriguez' counsel, Stephen Palazzo, sent a letter initiating an internal administrative appeal of that termination decision, pursuant to the terms of the Memorandum of Understanding between the City and the Burbank Police Officers' Association ("MOU"). A true and correct copy of that appeal letter is attached hereto as Exhibit A.

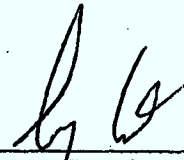
3. I am attorney of record for the City in that administrative appeal. The administrative hearing took place on June 28 and 29, 2010 and was presided over by, Michael Prihar, a neutral arbitrator selected by the parties. Rodriguez was represented by his counsel at the hearing, and was allowed to call witnesses, cross-examine witnesses, and present documentary evidence. The administrative hearing was completed; however, the proceeding is presently open for the limited purpose of transcribing three interviews of Jose Noe Alvarenga from Spanish to English so that those transcripts can be included in the record. After the transcripts are completed, which is expected to be in the next few weeks, the record will be closed. The parties will then have 30 days to submit post-arbitration briefs to the arbitrator. Thereafter, the arbitrator will issue an advisory opinion, which will be reviewed by the City Manager, who will issue a final decision on the appeal.



1           4. Attached hereto as Exhibit B are true and correct copies of the face  
2 page, table of contents, and certain provisions of the MOU with respect to  
3 administrative disciplinary actions. The procedures regarding arbitration hearings  
4 to challenge major discipline are set forth at pages 53-56 of the MOU.

5  
6           I declare under penalty of perjury under the laws of the Unites States of  
7 America that the foregoing is true and correct.

8           Executed this 20th day of July, 2011, at Burbank, California.  
9

10  
11   
12 \_\_\_\_\_  
13 Sergio Bent

# **EXHIBIT A TO SERGIO BENT DECLARATION**

PAUL Q. GOYETTE  
GARY G. GOYETTE  
STEPHEN V. PALAZZO  
DANIEL P. THOMPSON  
RAFAEL RUANO  
LAURO PAREDES  
JOY C. ROSENQUIST  
JOHN C. MCCASLIN  
FRANCESCA GIANLUARO  
ERIC ACEVEDO  
JOANNE M. NARLOCH

MARK R. SWARTZ  
OF COUNSEL  
PERSONAL INJURY

LABOR REPRESENTATIVES:  
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PAUL KONSORF  
LUCIANO BELTRAN  
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RICHARD S. BURRUSS  
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INFO@GOYETTE-ASSOC.COM

June 21, 2010

**Via facsimile (818) 238-5019 and U.S. Mail**

Judy Wilke  
Management Services Director  
City of Burbank Management Service Department  
PO Box 6459  
Burbank, CA 91510

Re: In the Matter of Appeal by Elfego Rodriguez; IA No. 04-16-09-01

Dear Ms. Wilke:


This office represents Elfego Rodriguez in the above referenced matter and writes to you in such capacity. Our office is in receipt of the final notice of termination dated June 10, 2010. Pursuant to paragraph 5 of that notice's "right to respond", under the Burbank Police Department Memorandum of Understanding, Article 6, Section E, please accept this letter as Mr. Rodriguez' timely appeal and request for arbitration.

If this notice is deficient in any manner or you require additional information, please do not hesitate to give me a call.

Please contact our office so that we may make the necessary arrangements to set up the arbitration.

Very truly yours,

GOYETTE & ASSOCIATES, INC.  
A Professional Law Corporation

  
Stephen V. Palazzo  
SVP:ljf

CITY ATTORNEY  
2010 JUN 25 AM 8:50

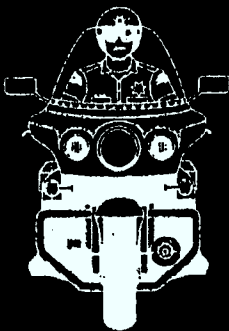
EP-REL-10JUN24PM1154

**EXHIBIT B TO SERGIO BENT DECLARATION**

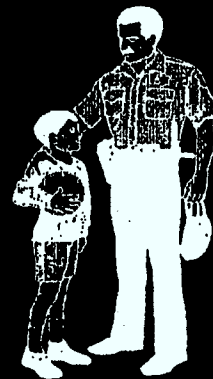
**EXHIBIT B TO SERGIO BENT DECLARATION**



Memorandum of Understanding  
between the  
City of Burbank  
and the  
Burbank Police Officers'  
Association



July 2007 through June 2009



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**ARTICLE VI**  
**DISCIPLINARY ACTION**

**A. STATEMENT/LIMITATIONS**

Employees of the City with permanent civil service status shall be assured of fair and consistent treatment and no arbitrary actions will be taken for disciplinary time off or termination of any employee without just cause and due process.

Any person holding a position or employment in the Civil Service System shall be subject to suspension without pay by the appointing power, but such suspensions shall not exceed a total of ninety (90) days in any fiscal year; provided, however, any person suspended without pay shall have the right of appeal in the manner provided by this Article. (BMC 2-514)

Neither the provisions of this section nor this Article shall apply to reductions in pay which are part of a general plan to reduce salaries and wages as an economy measure or as part of a general curtailment program. (BMC 2-515)

**B. REASONS FOR SUSPENSION, DEMOTION, OR DISMISSAL**

Suspension, demotion, or dismissal of an employee may be accomplished for any one or more of the following reasons:

- B.1. Violation of any official regulation or order or failure to obey any proper direction made and given by a superior, or failure to comply with any condition of employment or to maintain any necessary qualification in the course of municipal employment;
- B.2. Neglect of duty;
- B.3. Unjustified failure or refusal to properly perform the duties assigned;
- B.4. Carelessness in the discharge of assigned duties;
- B.5. Conduct of a disgraceful or scandalous nature;
- B.6. Malfeasance in office or employment;
- B.7. Conviction or forfeiture of bail for any job-related misdemeanor involving moral turpitude, or any felony;
- B.8. Having one's privilege to operate a motor vehicle on the public highway in the State of California suspended or revoked by the Department of Motor Vehicles where a driver's license is required for the performance of one's job;

- B.9. One (1) or more days unauthorized absence;
- B.10. Repeated tardiness;
- B.11. Inability to establish and maintain proper working relationships with fellow officers or employees;
- B.12. Reporting for duty, or being on duty, under the influence of alcohol, drugs or any combination thereof; or rendering oneself unfit to perform fully one's duties for reasons attributable to, or produced by, indulgence in alcohol, drugs, or any combination thereof;
- B.13. Absence from the job during the working hours without permission;
- B.14. Unauthorized use of City tools, equipment or property;
- B.15. Abuse or negligence in the care or operation of City tools, equipment or property;
- B.16. Use of sick leave for unauthorized purposes;
- B.17. Conduct unbecoming a public officer or employee;
- B.18. Receiving gratuities or any personal favor in exchange for the performance or for the non-performance of an assigned duty;
- B.19. Discussion of confidential City business or information with unauthorized persons;
- B.20. Willful refusal to respond to an official call in an emergency;
- B.21. Willfully making any false statements, certificates, or reports or in any manner committing or attempting fraud;
- B.22. Violation of administrative rules and regulations;
- B.23. Illegal possession or use of drugs or narcotics;
- B.24. Incompetency or inefficiency in the performance of required duties;
- B.25. Discrimination against, or harassment of, co-workers or the public based on race, religion, national origin, sex, age, handicap, or other unlawful consideration. (CSR XI)

- B.26. Consuming alcoholic beverages or illegal drugs during work hours, including lunch and rest periods.

**C. ORAL OR WRITTEN REPRIMAND PROCEDURES/APPEALS**

- C.1. Written reprimands shall be preceded by a written or oral notice to the employee of the time, date and reasons for an informal hearing two (2) calendar days prior to the hearing. This notice shall include specific and factual charges as enumerated in § B of this Article.
- C.2. All pre-disciplinary meetings relating to oral or written reprimands shall be held before the division commander (Police Captain or Police Administrator) who proposed the discipline. Testimony of witnesses shall not be allowed at pre-disciplinary meetings.
- C.3. When the oral or written reprimand is upheld by a division commander, any person may appeal to the Office of the Chief of Police (Chief or Deputy Chief). If the Deputy Chief proposes the discipline and conducts the pre-disciplinary meeting, the appeal shall be to the Chief of Police. The decision of the Office of the Chief of Police is final and there shall be no further administrative appeals for an oral or written reprimand. (Side letter 2/3/07)
- C.4. The BPOA and members represented by the BPOA shall have no right to appeal oral or written reprimands to either arbitration or the Civil Service Board.

**D. MINOR DISCIPLINE PROCEDURES/APPEALS**

- D.1. Minor discipline shall be all discipline administered where the punishment imposed is a suspension from work for not more than three (3) work periods or equivalent discipline.
- D.2. Minor discipline shall be preceded by a written or oral notice to the employee of the time, date and reasons for an informal hearing two (2) calendar days prior to the hearing. This notice shall include specific and factual charges as enumerated in Section B of this Article.
- D.3. All pre-disciplinary meetings shall be held before the division commander (Police Captain or Police Administrator) who proposed the discipline. Testimony of witnesses shall not be allowed at pre-disciplinary meetings for minor disciplines. (Side letter 2/3/07)
- D.4. The division commander shall document what occurs at the meeting including the problem, significant facts and the results. A copy will

be given to the affected employee, as well as placed in the employee's personnel file, except that no employee shall have any comment adverse to his/her interest entered in his/her personnel file, or any other file used for any personnel purposes by his/her employer, without the affected employee having first read and signed the instrument containing the adverse comment indicating he/she is aware of such comment, except that such entry may be made if after reading such instrument the affected employee refuses to sign it. Should an employee refuse to sign, the fact shall be noted on that document, and signed or initialed by the officer making the notation.

- D.5. If, during the course of the hearing, it becomes apparent that more than minor discipline is in order, the division commander shall terminate the hearing and then proceed in accordance with the procedure set forth below for major discipline. The employee will be informed as to why the hearing is being terminated.
- D.6. The division commander may decide on the facts and render a decision at the immediate conclusion of the hearing or advise the employee in writing within four (4) calendar days.
- D.7. When the minor discipline is upheld by a division commander, any person may select an arbitrator to hear their appeal pursuant to the process provided for in Section E.7. of this Article. The decision of the arbitrator shall be solely advisory in nature and may be verbal or in writing. The arbitrator in these proceedings shall have the same authority and jurisdiction as provided in Section E.10. of this Article.
- D.8. The appeal hearing and disposition of the appeal shall be informal, the object being to settle the appeal promptly by the parties. The parties shall have the right to offer evidence by witnesses at the hearing subject to the discretion of the arbitrator.
- D.9. The arbitrator may modify the disciplinary action, but in no event shall have the authority to increase the disciplinary action imposed to be greater than a four day suspension.
- D.10. The arbitrator's decision shall be rendered within five (5) working days of after the hearing. Provided, however, the parties may mutually agree to extend the time in which the judgment may be rendered. The arbitrator's decision shall be forwarded to the City Manager, who shall review it and make the final decision within fifteen (15) working days of its receipt.

D.11 The arbitrator's authority shall be limited to deciding the issues submitted by the parties. The arbitrator shall have no jurisdiction or authority to add to, delete from, or modify any written provisions of any Memorandum of Understanding.

D.12. All costs for the service of the arbitrator, including but not limited to, per diem expenses, travel and subsistence expenses, a transcript, and court reporter (if there is one) will be borne equally by the City and the BPOA.

**E. MAJOR DISCIPLINE PROCEDURES/APPEALS**

E.1. Major discipline shall be all discipline administered where the punishment imposed may result in suspension without pay of more than three (3) days or in the dismissal or demotion of the employee.

E.2.. Major discipline shall be preceded by a notice served on the employee ten (10) calendar days prior to a pre-disciplinary hearing. The notice shall contain the time, date and place of the hearing and shall also contain a brief statement of all charges against the employee. An earlier date may be established if the employee agrees, or with department approval, the date may be extended by five (5) calendar days.

E.3. In major disciplinary matters the statement of charges shall be specific and factual and enumerate violations of **Section B** of this Article.

E.4. In major disciplinary matters, the employee's rights include presenting testimony and evidence, inspection of City evidence, and representation by BPOA or an attorney. A full trial type evidentiary hearing is not required in pre-disciplinary hearings.

E.5. The Police Chief, or his designee, shall preside at major disciplinary hearings. The Police Chief, or his designee, shall document the significant occurrences at the hearing including facts, violations, brief summary of key testimony, attendees, etc. A copy will be placed in the employee's personnel file and the employee will be given a copy. The person conducting the hearing may decide on the facts and render a decision at the immediate conclusion of the hearing or advise the employee in writing within four (4) calendar days.

E.6. When a major discipline is upheld by the Police Chief or his designee, the BPOA may file a written request for arbitration to the Management Services Director within fifteen (15) working days

after the employee receives the final notice. In no event may an employee appeal a discipline individually.

- E.7. The BPOA and the Management Services Director shall attempt to mutually agree upon an arbitrator. If they cannot agree, they shall strike names from the panel of arbitrators below until one name remains. [NOTE: The parties reserve the right to incorporate additional, mutually agreed upon, arbitrators to this panel at any time.] The final arbitrator's name remaining on the list shall arbitrate the dispute. The order of striking shall be determined by a coin toss. The arbitrator shall be notified of his or her selection by a joint letter from the parties requesting that he or she set a time and place for the hearing, subject to the availability of the City and Union representatives.

**\*\* PANEL OF ARBITRATORS \*\***

Sara Adler	Michael Prihar	William Dorsey
Norman Brand	Joe Gentile	Walter Daugherty
Charles Askin	Robert Austin	Mark Burstein
Buddy Cohn	Howard Block	Philip Tamoush
Additional Arbitrators TBD		

- E.8. Ten (10) days prior to the hearing by an arbitrator, representatives of the parties shall meet and prepare a submission statement setting forth the issues to be submitted to the arbitrator and exchange evidentiary documents. In the event the parties cannot jointly agree on a submission statement then at the hearing each party shall present to the arbitrator its own submission statement in which case the arbitrator shall determine the issues to be resolved.
- E.9. If there is a dispute between the parties as to the question of whether an issue can be arbitrated, that question shall be submitted separately to the arbitrator for resolution prior to addressing the merits of the grievance.
- E.10. The arbitrator shall have all the authority provided in California Code of Civil Procedure Sections 1282 to 1284.3, except Section 1283.05 shall not apply to any arbitration held pursuant to this Memorandum of Understanding. The arbitrator shall have jurisdiction over all aspects of the arbitration including evidentiary rulings and discovery requests. Any party aggrieved by any evidentiary rulings or discovery orders may raise those issues as part of any appeal of the arbitrator's final decision after the arbitration via the administrative writ proceeding before the Superior Court.



E.11. Discovery shall be conducted between the parties in an informal way as provided below.

E.11.a. The party seeking information requests must do so in writing to the other party's representative designated to handle and expedite such requests.

E.11.b. A party who receives an information request shall respond within five (5) working days by supplying the information requested or requesting additional time to provide the information, the need for more specificity concerning the request, or its decision not to comply with the request. If a party refuses any request for information, specific reasons for the refusal shall be stated.

E.11.c. If a party requires more specifics; the requesting party shall provide it in writing within three (3) working days. Following the receipt of the more specified request the receiving party shall:  
i) provide the information sought by the requesting party within five (5) working days, or  
ii) inform the requesting party of its decision not to provide the information sought within five (5) working days.

E.11.d. It is understood that a party is under no obligation to provide information that may be protected by the Federal or State Constitution or Federal or State statutes. In the event that information is sought which might involve the release of "confidential" information (home address, medical condition, etc.) a party may offer to provide the information sought in redacted form.

E.11.e. If the receiving party believes that a request is unduly burdensome or does not exist in the form sought by the requesting party it shall inform the requesting party of such during the initial five (5) day period after receiving the request for information and discuss the problem with the requesting party's designated representative. The requesting party may agree to accept the information sought in the form in which the other has it, or press its original claim.

E.11.f. If the parties are unable to agree on what information (if any) is to be provided and/or in what form within the required period, the requesting party shall request the assistance of the arbitrator to obtain the information sought. The arbitrator may issue a subpoena duces tecum, to compel release of the information sought. Any party receiving a subpoena duces



tecum issued by the arbitrator shall provide the requesting party with the information required by subpoena within five (5) days of the receipt of the subpoena or shall seek court review within that time. No arbitration shall proceed to hearing until such time as the receiving party has produced the information sought by the requesting party or it obtains an order to the effect that the requesting party is not entitled to the information it has sought.

- E.12. The decision of an arbitrator resulting from any arbitration of grievances hereunder shall not add to, subtract from, or otherwise modify the terms and conditions of this Memorandum of Understanding. The decision of the arbitrator shall be solely advisory in nature. The arbitrator's written award shall be submitted within thirty (30) calendar days from the last day of the hearing. The arbitrator's decision shall be forwarded to the City Manager, who shall review the award and make the final decision within thirty (30) working days of its receipt.
- E.13. Employee called as witnesses during the course of the arbitration hearing shall be released for that purpose without loss of compensation or benefits. Witnesses will be subject to subpoena issued by the arbitrator, at the request of either the BPOA or the City, and enforceable by the City.
- E.14. The fee and expenses of the arbitrator and the cost of a written transcript, including the cost of the court reporter, shall be borne equally by the parties.
- E.15. Any permanent employee in the Civil Service System who has been demoted, dismissed or reduced in pay, shall be subject to the disciplinary procedures set forth in this Article and shall not be subject to the jurisdiction of the Civil Service Board. The procedures in this Article are exclusive and in no event shall the State Personal Employee Relations Board (PERB) have any jurisdiction regarding disciplinary actions by the City. Appeals of final decisions by the City Manager shall be made pursuant to the Code of Civil Procedure Sections 1094.5 and 1094.6.

**F. MEDIATION**

Prior to requesting a post disciplinary hearing, BPOA or City may request that a discipline be submitted to mediation subject to the provisions of Article VII Section D. of this MOU.

**G. EMERGENCY DISCIPLINARY SITUATIONS**

G.1. Emergency disciplinary situations exist when the continuation on

the job by the employee shall constitute an immediate adverse effect on the function of the department.

- G.2. In such situations the employee may be placed upon suspension with pay for a period of time no more than ten (10) calendar days from the employee's receipt of notice of the hearing, unless otherwise approved by the City Manager.
- G.3. At the discretion of the Police Chief, the employee may not be permitted to come to his/her regular place of employment or may be assigned a task where the department's function is not jeopardized by his/her presence.

## **EXHIBIT 3**

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/18/11

DEPT. 37

HONORABLE JOANNE O'DONNELL

JUDGE

E.T. ESPINOZA

DEPUTY CLERK

HONORABLE  
#

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff

Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL

Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

## NATURE OF PROCEEDINGS:

### RULING RE SUBMITTED MATTER

The Court having taken Motion of Defendant, City of Burbank (including the Police Department of the City of Burbank) for Summary Judgment/Adjudication (Rodriguez) under submission on May 17, 2011, now orders as follows:

Plaintiff's objections to defendant's evidence are ruled on as follows: 1-3, overruled; 4, sustained; 5-15ii, overruled. Defendant's objections to plaintiff's evidence are ruled on as follows: 14, 25, 43, 75 and 105, sustained. The remaining objections are overruled.

The court has not considered the additional evidence that defendant supplied with its reply brief. San Diego Watercrafts, Inc. v. Wells Fargo Bank, N.A. (2002) 102 Cal. App. 4th 308, 316. The court has, however, considered defendant's response to plaintiff's separate statement of additional material facts. Nazir v. United Airlines, Inc. (2009) 178 Cal. App. 4th 243, 249.

Summary judgment is granted.

Issue No. 1 -- First Cause of Action for Discrimination in Violation of FEHA. To prevail on a discrimination claim, a plaintiff must prove that he was (1) in a protected class, (2) performing

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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HONORABLE  
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JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff

Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL

Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

## NATURE OF PROCEEDINGS:

satisfactorily in his job, (3) he suffered an adverse employment action, and (4) the action occurred under circumstances suggesting a discriminatory motive. *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 355; Gov. Code, § 12940 subd. (a).

Defendant's argument that it has met its initial burden by showing that plaintiff never suffered an adverse employment action is without merit. "A materially adverse change might be indicated by a termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to a particular situation." *Thomas v. Dept. of Corrections* (2000) 77 Cal.App.4th 507, 511. Placing plaintiff on administrative leave was arguably an adverse employment action. Forcing plaintiff to give up all duties and responsibilities of his job for a appreciable amount of time is a clear change in the "terms, conditions, [and] privileges" of plaintiff's employment. *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1054-1055 (Id.)

Defendant, does, however, meet its initial burden of summary adjudication as to the first cause of action by providing evidence that it had a non discriminatory and legitimate reason for placing

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HONORABLE  
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JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff

Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL

Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

## NATURE OF PROCEEDINGS:

plaintiff on paid administrative leave. Specifically, defendant provides evidence that it placed plaintiff on administrative leave pending an investigation of misconduct that arose out of a fellow officer's statement that plaintiff forced him through threats to not comply with an earlier investigation into plaintiff's alleged misconduct with a robbery suspect. (UMF #17, 18, 20, 21. Chief Stehr put plaintiff on administrative leave pending the outcome of the reopened investigation so as to avoid any possible witness intimidation by plaintiff. (UMF # 30.) The burden shifts to plaintiff to rebut the defendant's evidence with evidence that raises an inference that the defendant's given reason for placing him on administrative leave is pretext and that the real reason was intentional discrimination based on his national origin. Plaintiff's argument that the detective's claim that he was threatened into silence about plaintiff's misconduct was not really the motivating reason for the administrative leave but that instead the leave was motivated by the police Chief's anger at plaintiff for complaining to the Mayor and Vice Mayor about discrimination problems in the department is not supported by plaintiff's evidence. Plaintiff's evidence that he talked with the Mayor does not support his claim that he talked with the mayor about discrimination issues. The evidence instead shows that plaintiff talked with the Mayor about a feud between the

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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HONORABLE  
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JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff  
Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL

Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

## NATURE OF PROCEEDINGS:

president of the Burbank Police Officer Association, Parrinello, and deputy Chief Taylor. (PDF # 124-133.) Plaintiff's evidence that the Chief retaliated against plaintiff because plaintiff had complained about him to other officers, called the Chief bipolar, said he was crazy, criminal, needed medication, needed to be fired, and that they needed to get rid of him immediately (Plaintiff's Disputed Facts ("PDF") # 151, 153) do not require a different result. None of these facts, if believed, suggest that plaintiff was not placed on leave to prevent him from intimidating witnesses during the reopened investigation, and that the real reason defendant was placed on leave was discrimination based on his national origin.

Because plaintiff has not met his burden of showing the existence of a triable issue, defendant is entitled to summary adjudication of the first cause of action.

Issue No. 2 -- Second Cause of Action for Harassment in Violation of FEHA. To establish unlawful harassment that is actionable under FEHA, a plaintiff must establish (1) she belongs to a protected group; (2) she was subjected to unwelcome acts or words based on his protected status; (3) the workplace was permeated with discriminatory intimidation, ridicule and insult that is so pervasive or severe it altered the conditions of

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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HONORABLE  
#

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff

Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL

Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

## NATURE OF PROCEEDINGS:

employment and created an abusive working environment; and (4) respondeat superior. Fisher v. San Pedro Peninsula Hospital (1989) 214 Cal.App.3d 590, 610; Aguilar v. Avis Rent A Car System, Inc. (1999) 21 Cal.4th 121, 130. The conduct must be extreme: "[O]ccasional, isolated, sporadic or trivial" acts cannot support a harassment claim as a matter of law. Fisher v. San Pedro Peninsula Hospital (1989) 214 Cal.App.3d 590, 610. Plaintiff is a Cuban American man. (UMF # 35.) Plaintiff admitted that since 2002 nobody ever directed any racial or ethnic slurs at him. (UMF #36.) This evidence is sufficient to support defendant's initial burden as it shows plaintiff cannot prove that he was subjected to unwelcome treatment based on his protected status as a Cuban American. The burden therefore shifts to plaintiff to show there is a triable issue of material fact concerning the elements of his harassment claim. The evidence plaintiff offers, however (UMF #36, 37, 52, 56, 93, 113, 116, 167, 168, 169, 170, 178-87) only supports the claim that plaintiff received messages stating that he was a "nigger lover" and received notes that had anti gay messages scribbled on them. While these messages are hateful and inappropriate for the workplace, they are not directed at plaintiff's national origin and plaintiff has never claimed to be the victim of discrimination based on his sexual orientation. Similarly, evidence that plaintiff heard inappropriate workplace comments about women,



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HONORABLE  
#

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff

Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL

Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

## NATURE OF PROCEEDINGS:

Armenians, African Americans, and gays does not show that plaintiff himself was the subject of work place harassment based on his race, ethnicity, sexual orientation, or gender. Plaintiff cannot maintain a harassment suit on behalf of others who suffered harassment in the police department. Thompson v. City of Monrovia (2010) 186 Cal.App.4th 860, 877-78. In any event, even the evidence of comments that could be construed to be harassment directed at plaintiff on account of his national origin are not frequent or severe enough to constitute harassment under FEHA as a matter of law. Finally, Plaintiff's citation to the deposition of another officer who claims that he heard disparaging remarks about people of Hispanic descent at the police department do not create a triable issue whether plaintiff was harassed because of his national origin. A "plaintiff generally must show that the harassment directed at others was in her immediate work environment, and that she personally witnessed it. The reason for this is obvious: if the plaintiff does not witness the incidents involving others, 'those incidents cannot affect . . . her perception of the hostility of the work environment.'" Lyle v. Warner Bros. Television Productions (2006) 38 Cal.4th 264, 285. Accordingly, plaintiff has not met his burden of showing the existence of a triable issue on his harassment claim and defendant is entitled to summary adjudication of plaintiff's second cause of action.

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JUDGE

E.T. ESPINOZA

DEPUTY CLERK

HONORABLE  
#

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff  
Counsel

OMAR RODRIGUEZ ET AL  
VS

NO APPEARANCES

BURBANK POLICE DEPARTMENT ET AL

Defendant  
Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

## NATURE OF PROCEEDINGS:

Issue No. 3 -- Third Cause of Action for Retaliation in Violation of FEHA. To state a prima facie case of FEHA retaliation, a plaintiff must show that (1) he engaged in "protected activity" by complaining to the employer of discrimination or participating in activities opposing the employer's practices reasonably believed to be unlawful under §12940, (2) the decision maker took an adverse employment action against plaintiff, and (3) the action would not have been taken but for the complaint. *Mokler v. County of Orange* (2007) 157 Cal.App.4th 121, 138.

As explained above, defendant does not meet its burden of showing that placing plaintiff on leave was not an "adverse employment action." However, defendant does meet its initial burden by providing evidence supporting a non-retaliatory legitimate reason for the adverse employment action and, thus, that plaintiff cannot prove that he would not have been placed on administrative leave but for the complaint. As explained above, defendant has sufficiently established that plaintiff was put on leave because of accusations from a fellow officer that plaintiff had threatened him into silence during an investigation into plaintiff's alleged misconduct with a robbery suspect. Plaintiff fails to provide any evidence that he would not have been placed on administrative leave if it weren't for his complaints about discrimination. Because plaintiff fails to show the existence of a triable issue

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HONORABLE  
#

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff

Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL

Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

## NATURE OF PROCEEDINGS:

concerning his retaliation cause of action, summary adjudication of that cause of action is proper.

Issue No. 4 -- Fifth cause of action for Failure to Take Reasonable Steps to Prevent Harassment, Discrimination, and Retaliation in Violation of FEHA. Actionable harassment or discrimination is a necessary prerequisite to a failure to prevent claim. Trujillo v. North County Transit District (1998) 63 Cal.App.4th 280. Defendant has met its initial burden by showing that plaintiff cannot support his claims for harassment, retaliation, or discrimination with evidence, as explained above. Also as explained above, plaintiff has not met the resulting burden to proffer evidence showing a triable issue of material fact concerning these claims. Because plaintiff fails to show the existence of a triable issue as to the fifth cause of action, summary adjudication of that cause of action is proper.

Issue No. 5 -- Sixth Cause of Action for Violation of the Public Safety Officers Procedural Bill of Rights ("POBRA"). Prior to filing a suit for money damages against a government entity, a plaintiff must file a claim with the entity pursuant to the Government Claims Act. Gov't Code § 900 et seq. Defendant meets its initial burden by showing that plaintiff never filed a government claim that mentioned the POBRA claim that plaintiff now wishes

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/18/11

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HONORABLE JOANNE O'DONNELL

JUDGE

E.T. ESPINOZA

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

#

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff

Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL

Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

## NATURE OF PROCEEDINGS:

to assert. On May 27, 2009, plaintiff filed a government claim act claim. (UMF # 77.) This claim makes no mention of the POBRA claims that plaintiff now asserts. Plaintiff's argument that it has evidence supporting violations of POBRA, including evidence that Chief Stehr discussed discipline of an officer with other officers, that defendant searched and confiscated plaintiff's property without a warrant, and that defendant ordered plaintiff to refrain from communicating with fellow officers during his administrative leave, and that defendant interrogated plaintiff without the proper safeguards (PDF # 150, 190) does not create a triable issue because it does not address defendant's claim that plaintiff failed to file a claim for the POBRA violations. In any event, Plaintiff's government claims act claim makes no mention of any of the violations of which plaintiff now asserts he has evidence. (UMF # 77; FAC, Ex. B.) Nothing in plaintiff's government claim put the department on notice of any illegal search and seizure, unlawful interrogation, or breach of officer privacy claim, the claims which plaintiff now wishes to assert through POBRA. Because plaintiff fails to create a triable issue as to his POBRA claim, defendant is entitled to summary adjudication of that issue.

Issue No. 6 -- Seventh Cause of Action for Injunctive Relief. Defendant has met its burden by showing that plaintiff cannot support any of the

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/18/11

DEPT. 37

HONORABLE JOANNE O'DONNELL

JUDGE E.T. ESPINOZA

DEPUTY CLERK

HONORABLE  
#

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff

Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL

Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

## NATURE OF PROCEEDINGS:

claims on which the request for injunction is premised. Plaintiff's opposition fails to address this claim. Accordingly, summary adjudication of this issue is appropriate.

Because summary adjudication of all the issues is proper and effectively disposes of all of the claims against defendant, summary judgment of Rodriguez's claims against defendant is warranted.

## CLERK'S CERTIFICATE OF MAILING/ NOTICE OF ENTRY OF ORDER

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of May 18, 2011 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: May 18, 2011

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/18/11

DEPT. 37

HONORABLE JOANNE O'DONNELL

JUDGE E.T. ESPINOZA

DEPUTY CLERK

HONORABLE  
#

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff

Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL

Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

## NATURE OF PROCEEDINGS:

John A. Clarke, Executive Officer/Clerk

By: E.T. Espinoza

E T Espinoza

Solomon Gresen

Law Offices of Rheuban & Gresen

15910 Ventura Blvd., Suite 1610

Encino, CA 91436

Lawrence Michaels/Veronica Von Grabow

Mitchell, Silberberg & Knupp, LLP

11377 W. Olympic Blvd.

Los Angeles, CA 90064-1683

## PROOF OF SERVICE

42729-00001

*Elfego vs. City of Burbank* – Court of Appeal No. B227414  
Appeal from *Rodriguez, et al. vs. Burbank Police Department, et al.* — LASC Case No. BC414602

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Mitchell Silberberg & Knupp LLP, 11377 West Olympic Boulevard, Los Angeles, California 90064-1683.

On September 2, 2011, I served a copy of the foregoing document(s) described as:

**1. RESPONDENT'S BRIEF**

**2. MOTION TO TAKE JUDICIAL NOTICE OF (1) PLAINTIFF AND APPELLANT ELFEGO RODRIGUEZ'S COMPLAINT FILED IN UNITED STATES DISTRICT COURT, CENTRAL DISTRICT, CASE NO. CV11-04858-ODW-PJWx ; (2) DECLARATION OF SERGIO BENT FILED IN THAT SAME LAWSUIT; (3) MAY 18, 2011 MINUTE ORDER GRANTING SUMMARY JUDGMENT AGAINST PLAINTIFF OMAR RODRIGUEZ**

**3. [PROPOSED] ORDER RE: MOTION TO TAKE JUDICIAL NOTICE OF (1) PLAINTIFF AND APPELLANT ELFEGO RODRIGUEZ'S COMPLAINT FILED IN UNITED STATES DISTRICT COURT, CENTRAL DISTRICT, CASE NO. CV11-04858-ODW-PJWx ; (2) DECLARATION OF SERGIO BENT FILED IN THAT SAME LAWSUIT; (3) MAY 18, 2011 MINUTE ORDER GRANTING SUMMARY JUDGMENT AGAINST PLAINTIFF OMAR RODRIGUEZ**

on the interested parties in this action at their last known address as set forth below by

taking the action described below:

Los Angeles Superior Court, Department 37  
The Honorable Joanne O'Donnell  
111 North Hill St.  
Los Angeles, CA 90012  
Tel: (213) 974-5649

Solomon E. Gresen, Esq., [seg@rglawyers.com](mailto:seg@rglawyers.com)  
Steven V. Rheuban, Esq., [svr@rglawyers.com](mailto:svr@rglawyers.com)  
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F: (818) 815-2737

*Attorneys for Plaintiffs Omar Rodriguez, Cindy Guillen-Gomez, Steve Karagiosian, Elfego Rodriguez, and Jamal Childs*

Kenneth C. Yuwiler, [kyuwiler@shslaborlaw.com](mailto:kyuwiler@shslaborlaw.com)  
Silver Hadden Silver Wexler & Levine  
1428 Second Street  
Santa Monica, CA 90401  
T: (310) 393-1486  
F: (310) 395-5801  
*Attorneys for Plaintiff and Cross-Defendant Omar Rodriguez*

☒ **BY PERSONAL DELIVERY:** I placed the above-mentioned document(s) in sealed envelope(s), and caused personal delivery by of the document(s) listed above to the person(s) at the address(es) set forth above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 2, 2011 at Los Angeles, California.

  
Michele Glikman



CLERK'S OFFICE  
COURT OF APPEAL SECOND DIST.  
FILED

Case No. B227414

2011 SEP -7 PM 3:46

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION 4

ELFEGO RODRIGUEZ, et al.,  
*Plaintiffs and Appellants,*

v.

BURBANK POLICE DEPARTMENT ET AL.,  
*Defendants and Respondents.*

Appeal from Superior Court of Los Angeles County, Department 37  
The Honorable Joanne O'Donnell, Telephone: (213) 974-5649  
LASC Case No. BC 414602

**AMENDED PROOF OF SERVICE FOR SUPERIOR COURT**

MITCHELL SILBERBERG & KNUPP LLP  
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Veronica T. von Grabow (State Bar No. 259859), vtv@msk.com  
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Glendale, California 91203-9946  
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Facsimile: (818) 506-4827

**CITY ATTORNEY'S OFFICE – CITY OF BURBANK**  
**Carol A. Humiston (SBN 115592), [chumiston@ci.burbank.ca.us](mailto:chumiston@ci.burbank.ca.us)**  
**275 East Olive Avenue**  
**Burbank, California 91510**  
**Telephone: (818) 238-5707**  
**Facsimile: (818) 238-5724**

**Attorneys for Defendants and Respondents**  
**CITY OF BURBANK, including the**  
**POLICE DEPARTMENT OF THE CITY OF BURBANK**  
**(erroneously sued as an independent entity named**  
**“BURBANK POLICE DEPARTMENT”)**

**PROOF OF SERVICE**

42729-00001

*Elfego vs. City of Burbank – Court of Appeal No. B227414*  
*Appeal from Rodriguez, et al. vs. Burbank Police Department, et al. — LASC Case No. BC414602*

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Mitchell Silberberg & Knupp LLP, 11377 West Olympic Boulevard, Los Angeles, California 90064-1683.

On September 2, 2011, I served a copy of the foregoing document(s) described as:

**1. RESPONDENT'S BRIEF**

**2. MOTION TO TAKE JUDICIAL NOTICE OF (1) PLAINTIFF AND APPELLANT ELFEGO RODRIGUEZ'S COMPLAINT FILED IN UNITED STATES DISTRICT COURT, CENTRAL DISTRICT, CASE NO. CV11-04858-ODW-PJWx ; (2) DECLARATION OF SERGIO BENT FILED IN THAT SAME LAWSUIT; (3) MAY 18, 2011 MINUTE ORDER GRANTING SUMMARY JUDGMENT AGAINST PLAINTIFF OMAR RODRIGUEZ**

**3. [PROPOSED] ORDER RE: MOTION TO TAKE JUDICIAL NOTICE OF (1) PLAINTIFF AND APPELLANT ELFEGO RODRIGUEZ'S COMPLAINT FILED IN UNITED STATES DISTRICT COURT, CENTRAL DISTRICT, CASE NO. CV11-04858-ODW-PJWx ; (2) DECLARATION OF SERGIO BENT FILED IN THAT SAME LAWSUIT; (3) MAY 18, 2011 MINUTE ORDER GRANTING SUMMARY JUDGMENT AGAINST PLAINTIFF OMAR RODRIGUEZ**

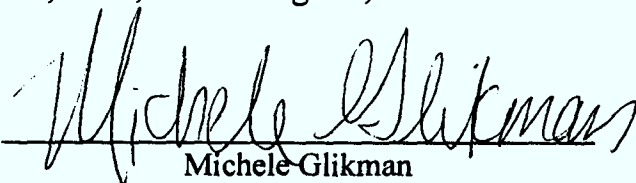
on the interested parties in this action at their last known address as set forth below by taking the action described below:

Clerk of the Court Los Angeles County Superior Court /Central District 111 North Hill St. Los Angeles, CA 90012
--------------------------------------------------------------------------------------------------------------------------

☒ **BY OVERNIGHT MAIL:** I placed the above-mentioned document(s) in sealed envelope(s) designated by the carrier, with delivery fees provided for, and addressed as set forth above, and deposited the above-described document(s) with FedEx in the ordinary course of business, by depositing the document(s) in a facility regularly

maintained by the carrier or delivering the document(s) to an authorized driver for the carrier.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 2, 2011, at Los Angeles, California.

  
Michele Glikman

Case No. B227414

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION 4

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JOSEPH A. LANE CLERK

ELFEGO RODRIGUEZ, et al.,  
*Plaintiffs and Appellants,*

v.

BURBANK POLICE DEPARTMENT ET AL.,  
*Defendants and Respondents.*

Appeal from Superior Court of Los Angeles County, Department 37  
The Honorable Joanne O'Donnell, Telephone: (213) 974-5649  
LASC Case No. BC 414602

**PROOFS OF SERVICE BY MESSENGER**

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Attorneys for Defendants and Respondents  
CITY OF BURBANK, including the  
POLICE DEPARTMENT OF THE CITY OF BURBANK  
(erroneously sued as an independent entity named  
“BURBANK POLICE DEPARTMENT”)

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18, and not a party to the within action; my business address is 1517 West Beverly Boulevard, Los Angeles, California 90026.

On September 2, 2011, I served the foregoing document(s) described as

**1. RESPONDENT'S BRIEF**

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which was enclosed in sealed envelopes addressed as follows, and taking the action described below:

Solomon E. Gresen, Esq.,  
Steven V. Rheuban, Esq.,  
Law Offices of Rheuban & Gresen  
15910 Ventura Boulevard, Suite 1610  
Encino, CA 91436  
T: (818) 815-2727  
F: (818) 815-2737  
*Attorneys for Plaintiffs Omar Rodriguez,  
Cindy Guillen-Gomez, Steve Karagiosian,  
Elfego Rodriguez, and Jamal Childs*

☒ **BY PERSONAL SERVICE:** I hand delivered such envelope(s):

- ☐ to the addressee(s);
- ☒ to the receptionist/clerk/secretary in the office(s) of the addressee(s).
- ☐ by leaving the envelope in a conspicuous place at the office of the addressee(s) between the hours of 9:00 a.m. and 5:00 p.m.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 2, 2011, at Los Angeles, California.

ANDY GOVKASIAN  
Printed Name

  
Signature

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18, and not a party to the within action; my business address is 1517 West Beverly Boulevard Los Angeles, California 90026. On September 2, 2011, I served the foregoing document(s) described as

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which was enclosed in sealed envelopes addressed as follows, and taking the action described below:

Kenneth C. Yuwiler,  
Silver Hadden Silver Wexler & Levine  
1428 Second Street  
Santa Monica, CA 90401  
T: (310) 393-1486  
F: (310) 395-5801  
*Attorneys for Plaintiff and Cross-Defendant  
Omar Rodriguez*


☒ **BY PERSONAL SERVICE:** I hand delivered such envelope(s):

- ☐ to the addressee(s);
- ☒ to the receptionist/clerk/secretary in the office(s) of the addressee(s).
- ☐ by leaving the envelope in a conspicuous place at the office of the addressee(s) between the hours of 9:00 a.m. and 5:00 p.m.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 2, 2011, at Los Angeles, California.

ARNEL BARTOLOME

Printed Name



Signature